

LYNN SCHUSTERMAN

IBLA 77-13

Decided March 18, 1977

Appeal from a letter-decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W-18886.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

A late payment of rental due for an oil and gas lease results in termination of the lease, and the lease will not be reinstated, where the lessee relied upon a third party to pay the rental, but no acceptable justification is shown for the delay.

APPEARANCES: Charles Schusterman, husband of Lynn Schusterman, Tulsa, Oklahoma.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Lynn Schusterman has appealed from a letter-decision of the Wyoming State Office, Bureau of Land Management (BLM), dated September 14, 1976, denying her petition for reinstatement of oil and gas lease W-18886. Appellant's lease was terminated on August 1, 1976, for failure to make timely payment of the rental.

Rental for lease W-18886, due on or before August 2, 1976, (August 1 was a Sunday), was received August 12, 1976.

In the petition for reinstatement appellant asserted that the lease in question was subject to a farmout agreement with Dart, Inc.; that appellant's interpretation of the agreement was that Dart, Inc., was to pay the rental; that appellant inquired of Dart,

Inc., and it assured appellant that the rental had been paid; that appellant requested a copy of the check and upon receipt appellant discovered that rental had only been paid on another lease; and that upon learning this, appellant immediately sent a check to BLM.

BLM denied the petition, stating that it is the responsibility of the lessee of record to pay the rental timely.

On appeal it is asserted that \$ 175,000 was expended to drill a well "offsetting this lease" and that appellant be allowed "to further develop this lease." It is stated that "[a] diligent effort was made to insure timely payment."

Reinstatement of an oil and gas lease terminated by operation of law may be allowed where the lessee can establish to the satisfaction of the Secretary of the Interior that the failure to make timely payment was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970). Reasonable diligence generally requires sending rental payments sufficiently in advance of the anniversary date of the lease to allow for normal delays in the collection, transmittal and delivery of the payment. 43 CFR 3108.2-1(c)(2); Samuel J. Testagrossa, 25 IBLA 64 (1976).

[1] Appellant failed to exercise reasonable diligence. While the postmark on the envelope containing the rental check is indecipherable, it was not received until August 12, 1976, and appellant has made no assertion that it was mailed prior to the due date. The fact that the lease was subject to a farmout agreement with Dart, Inc., and appellant believed that Dart, Inc., was responsible for paying the rental does not constitute a justifiable reason for failure to make timely payment.

While appellant apparently attempted to determine if Dart, Inc., had, in fact, paid the rental, such attempt was not undertaken in sufficient time to allow payment on or before the due date when appellant learned that Dart, Inc., had not made the necessary payment. Appellant, as the lessee of record at the time the rental payment was due, has the responsibility of either making timely payment or making certain that the rental was timely paid. Clarence and Marguerite Zuspann, 18 IBLA 1, 3-4 (1974).

For the reasons stated above, we find that appellant's petition for reinstatement was properly denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Newton Frishberg
Chief Administrative Judge

